

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONUNITED STATES OF AMERICA,
Plaintiff/Respondent,

v.

WILLIAM J. TRUJILLO,
Defendant/Petitioner.NO. CR-94-2088-EFS
(NO. CV-10-3109-EFS)**ORDER DENYING PETITIONER
TRUJILLO'S MOTION UNDER 28
U.S.C. § 2255 TO VACATE, SET
ASIDE, OR CORRECT SENTENCE**

Before the Court is Petitioner William J. Trujillo's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("the Petition"). (ECF No. 45.) Pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings for the U.S. District Courts, the Court examined the Petition and the record and determines that summary dismissal is required for the reasons given below. Rule 4(b), 28 U.S.C. foll. § 2255; *see also* *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir. 1982).

A. Background

On November 1, 1994, Petitioner was arrested and charged with Assault in the First Degree, Burglary in the First Degree, and Theft of a Firearm in Yakima County, Washington. On November 8, 1994, Petitioner was indicted on the instant federal charge of Felon in Possession of a

1 Firearm under 18 U.S.C. § 922(g)(1). Yakima County then elected to
2 dismiss its charges against Petitioner without prejudice; the dismissal
3 order stated, "said action should be dismissed . . . to allow federal
4 prosecution of the defendant prior to proceeding on state charge." (ECF
5 No. 46, Attach. A.)

6 On March 13, 1995, Petitioner pled guilty to the federal firearm
7 charge. *Id.*, Attach B. On June 5, 1995, Petitioner was sentenced by
8 Judge Alan McDonald to 100 months. *Id.*, Attachs. C & D. Also on June
9 5, 1995, Yakima County charged Petitioner again with the three
10 previously-charged state offenses. Petitioner was found guilty by a
11 state jury on July 13, 1995, and was sentenced to 320 months on November
12 30, 1995. *Id.*, Attach. E. The Yakima County court imposed the 320-month
13 sentence to run consecutive to the 100-month federal sentence. *Id.*

14 On November 16, 2010, this Petition was filed, seeking relief under
15 2255 because Judge McDonald 1) unlawfully directed that the federal
16 sentence be served consecutive to the to-be-imposed state sentence, and
17 2) failed to caution Petitioner during the plea colloquy that the state
18 sentence would be served consecutive to the federal sentence.

19 **B. Authority and Analysis**

20 Section 2255 allows a prisoner in federal custody to attack a
21 sentence on the grounds that such sentence was imposed in violation of
22 the federal constitution or law, the Court did not have jurisdiction to
23 impose the sentence, and the sentence exceeded the allowed. 28 U.S.C.
24 § 2255. Approximately one year after Petitioner's conviction and
25 sentence, Congress enacted the Antiterrorism and Effective Death Penalty
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1 Act, which, in pertinent part, required a § 2255 petition to be filed
2 within one year of the latest of the following events:

- 3 (1) the date on which the judgment of conviction becomes
final;
- 4 (2) the date on which the impediment to making a motion
5 created by governmental action in violation of the
6 Constitution or laws of the United States is removed, if
the movant was prevented from making a motion by such
governmental action;
- 7 (3) the date on which the right asserted was initially
8 recognized by the Supreme Court, if that right has been
newly recognized by the Supreme Court and made
retroactively applicable to cases on collateral review;
or
- 9 (4) the date on which the facts supporting the claim or
10 claims presented could have been discovered through the
exercise of due diligence.

11 28 U.S.C. § 2255.

12 Petitioner submits that he is not subject to AEDPA's one-year filing
13 requirement because he pled guilty and was sentenced before its effective
14 date. This argument is unsuccessful. All post-AEDPA § 2255 petitions
15 are subject to AEDPA's one-year time requirement. 28 U.S.C. §2255. A
16 one-year grace period was given to prisoners to file petitions relating
17 to pre-AEDPA convictions and sentences. This grace period ended on April
18 26, 1997. See *United States v. Schwartz*, 274 F.3d 1220, 1223 (9th Cir.
19 2001). Therefore, Petitioner, like all other prisoners, must satisfy the
20 one-year time requirement.

21 Petitioner did not identify which one-year subsection he believed
22 he satisfies. Clearly subsection (1) does not apply because the judgment
23 became final in 1996, almost fifteen years ago. Petitioner has not
24 identified a removed impediment or a new Supreme Court decision upon
25 which he relies; therefore, the second and third subsections do not
26 apply. Petitioner's state-court personal restraint petition was

1 dismissed by the Washington Court of Appeals exactly one year before this
2 Petition was filed. However, Defendant was aware of the alleged facts
3 supporting this Petition when he was sentenced by the state court in
4 November 1995, i.e., 1) that sentencing Judge McDonald failed to advise
5 Petitioner that he could face a concurrent state-court sentence based on
6 the same underlying events, and 2) the subsequent state-court sentence
7 was ordered to run concurrent to the federal sentence by the state-court
8 judge. Accordingly, the last subsection also does not apply.

9 Even if the Petition was timely, the Court concludes it is clear
10 that Petitioner is not entitled to the relief he seeks because Judge
11 McDonald did not direct Petitioner's federal sentence to be served
12 concurrent to the to-be-imposed state sentence. (ECF No. 46, Attachs.
13 C & D.) In fact, Judge McDonald advised Petitioner during sentencing
14 that it was unknown what the state court would do and that his sentencing
15 decision was not impacted by the unforeseeable action that the state court
16 might take. *Id.*, Attach. C. Accordingly, Petitioner was on notice that
17 the state court might also prosecute Petitioner for the same underlying
18 conduct and impose whatever sentence it deemed appropriate.

19 Further, in the Plea Agreement, Petitioner waived the right to seek
20 relief under 28 U.S.C. § 2255. Plea Agreement paragraph 6 states in
21 pertinent part, "[Petitioner] shall not seek nor pursue an appeal,
22 including a 28 U.S.C. § 2255 proceeding to the extent such an appeal may
23 be waived, of any sentence which he may receive as a result of this plea
24 providing that sentence is within or below the applicable United States
25 Sentencing Guidelines range." (ECF No. 46, Attach. B.) Judge McDonald
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1 sentenced Petitioner within the applicable Guideline range. Accordingly,
2 Petitioner waived his right to seek relief under § 2255.

3 For the above-given reasons, **IT IS HEREBY ORDERED:** Petitioner's
4 Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence
5 by a Person in Federal Custody (**ECF No. 45**) is **DENIED**.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter
7 this Order and provide a copy of this Order to Petitioner and the United
8 States Attorneys Office.

9 **DATED** this 6th day of December 2010.

10
11 s/Edward F. Shea
12 EDWARD F. SHEA
13 United States District Judge

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